IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 580 OF 2007

in

L.C.SUIT NO. 5384 OF 1999

Yashwant Hari Jadhav & Ors. ... Applicants

Versus

Smt. Pushpa Sakharam Patil & Ors. Respondents

Mr. D.D.Singh, Advocate, for the applicants.

Mr. D.A.Sakhalkar,Advocate, i/b. Anil R.Mishra,Advocate for respondent No.1.

CORAM: J.H.BHATIA,J.

DATE: 12th December,2007.

P.C.

1. Heard learned counsel for the applicants, who are the original defendants Nos. 8 to 24 and respondent No.1, who is the original plaintiff.

2. The plaintiff filed suit against the Municipal Corporation and 22 persons, who are tenants in the premises of the plaintiff. By the said suit, the plaintiff sought declaration that defendnt No.1 - Municipal Corportion and defendant No.2 - the Ward

Officer are liable to take appropriate action in respect of the unauthorised structures on the plaintiff's property and mandatory injunction directing defendants Nos. 1 and 2 for taking appropriate action against such structures. The suit is pending since 1999 before the City Civil Court. The matter is at the stage of final hearing and disposal. On 29.10.2007, an application was made on behalf of defendants Nos. 8 to 24 seeking permission to file affidavit of defendant No.8 as evidence and they also offered the said defendant No.8 for cross-examination. They sought a direction to set aside the earlier order dated 11.10.2007 whereby the request for adjournment of the applicants was rejected. The application made by defedants Nos. 8 to 24 came to be rejected by the trial Court by observing "In the plaint no prayer is made against these defednants. The prayer is against the deft. Nos. 1 & 2 for a direction to take appropriate steps as per law. The reference to these defts. is only to that extent. The burden is on the plff. to show that they are entitled to seek the relief. There is no corresponding relief on these defts. There is no interim relief in this case. Thus there is no need for these defts. to adduce any evidence at this stage in this suit."

Being aggrieved by this order, defendant Nos. 8 to 24

have prefererd the present Revision Application.

3. The plaintiff claims to be a landlady and the defendants are the tenants. She wants the structure in possession of the defendants to be demolished by seeking an order against defendants nos. 1 and 2 - the Municipal authorities. Even though the direction was sought against defendants 1 and 2, the effect and consequeces of that order will have to be faced by defedants Nos. 8 to 24. If the plaitniff did not want any dirctions against defendants Nos. 8 to 24, she would not have impleaded them as parties in the matter. She made them as party-defendants because she wanted the relief which is going to affect the defendants directly. In fact, the Municipal authorities may have no defence in the matter, but the defendants, who are likely to be affected by the order, may have good defence to point out that there are no unauthorised structures or that the suit is filed only as a ploy to get the tenants evicted from the property. In such circumstances, it will be against the principles of natural justice to deny defendants nos. 8 to 24 to give evidence in defence. It is admitted that on 11.10.2007, when the matter was on board for evidence, the defendants were not present to lead evidence and they had sought adjournment. That adjournment application was rejected,

but anyway, the matter was adjourned to 29.10.2007, and on that day, the defendants offered to file affidavit of defendnt No.8 in examination in chief and they also offered him for cross-examinatin. In such circumstances, there could be no justification for the trial Court to refuse an opportunity to the defednants to lead evidence. However, taking into consideration the implications and the consequences of the decree that may be passed, in my considered opinion, the impugned order is illegal and improper and needs to be set aside.

4. Revision Application is allowed. The impugned order is hereby set aside. Defendant Nos. 8 to 24/Applicants are allowed to lead evidence. The learned Counsel for the parties inform that the matter is fixed before the trial Court on 19.12.2007. on that day the defendants shall file affidavit of defendant No.8 as defence witness and he shall also remain personally present for cross-examination by the opposite party. With these directions, the Revision Application stands disposed of.

5. In the result, Civil Application No.44 of 2007 does not survive and stands dispode of accordingly.

(J.H.BHATIA, J.)